

14-14F. Cost Recovery Arbitration (1200 TN 350 14-14F)

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), to:

- a. To refer cost recovery claims for resolution by arbitration; and
- b. To represent EPA at arbitration hearings, conferences, and negotiations.

2. TO WHOM DELEGATED. The authority in 1.a. is delegated to the Director, Superfund and Emergency Management Division (SEMD). The authority in 1.b. is delegated to the Regional Counsel or his/her designee.

3. LIMITATIONS.

- a. The delegatee must obtain the advance concurrence of the Regional Counsel or his/her designee before exercising the authority in 1.a.
- b. The delegatee must notify the Assistant Administrator for the Office of Enforcement and Compliance Assurance (AA/OECA) and the Assistant Administrator for the Office of Land and Emergency Management (AA/OLEM), or their designees prior to exercising the authority in 1.a. The Assistant Administrators may waive the notification limitation by memorandum.

4. REDELEGATION AUTHORITY.

- a. The authority in 1.a. may be redelegated to the branch chief level.
- b. The authority in 1.b. may be redelegated to the staff attorney level.
- c. These authorities may not be redelegated without formal amendment.
- d. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically delegated.

5. ADDITIONAL REFERENCES.

- a. Sections 104, 107, and 122(h)(2) of CERCLA.
- b. Procedures for referral of cost recovery claims for resolution by arbitration and for representing EPA at arbitration hearings, conferences, and negotiations are published at 40 CFR Part 304, Arbitration Procedures for Small Superfund Cost Recovery Claims.

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- c. Authority to enter into or exercise Agency concurrence in non-judicial agreements or administrative orders for the recovery of response costs is delegated in 14-14-D, "Cost Recovery Non-Judicial Agreements and Administrative Consent Orders." Delegation 14-14-D may become applicable under arbitration regulation.
- i. If the Agency seeks to adopt a proposed arbitral decision as an administrative settlement pursuant to Section 122(h)(1) of CERCLA when the arbitration has been converted to a non-binding arbitration because costs increased to a dollar amount in excess of \$500,000, excluding interest, prior to the rendering of the final arbitral decision; or
- ii. If the parties to the arbitration settle the claim as an administrative settlement pursuant to Section 122(h)(1) of CERCLA, rather than having the settlement embodied in a proposed arbitral decision.

In either instance, if the total response costs at the facility exceed \$500,000, excluding interest, the Agency may not compromise the claim without the prior written approval of the Attorney General.

- d. Authority to enter into or exercise Agency concurrence in de minimis settlements under Section 122(g) of CERCLA is delegated in Delegation 14-14-E, "De Minimis Settlement."

6. SUPERSESSION. Delegations Manual, CERCLA, Regional Delegation 14-14-D, Cost Recovery Arbitration, 1200 TN RIII 144, (November 20, 2000).

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Cosmo Servidio
Regional Administrator